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File

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/305, 178 05/04/99 RIBADEAU-DUMAS

G 6-1032-035

IM62/0714

EXAMINER

HENDERSON & STURM LLP
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DES MOINES IA 50309-4076

DUBOIS, P

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED:

07/14/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/305,178	RIBADEAU-DUMAS ET AL.	
	Examiner DuBois	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1) Responsive to communication(s) filed on 18 April 2000.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 14-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 14-24 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some * c) None of the CERTIFIED copies of the priority documents have been:

1. received.

2. received in Application No. (Series Code / Serial Number) _____.

3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 20) Other: _____

DETAILED ACTION

Response to Amendment

The cancellation of claims 1-13 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-18, 20-21 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhibadeau-Dumas et al (U.S. Patent 5,470,591).

Rhibadeau-Dumas et al (Rhibadeau-Dumas) teach an agent capable of controlling propagation of crystallization of maltitol present in a confectionery, of molecules having a molecular weight greater than 1,300. Rhibadeau-Dumas teaches that the syrup can be used to prepare boiled sugar products (U.S. Patent 5,470,591, abstract). Rhibadeau-Dumas teaches that in the boiled sugar product that a propagation of crystallization of maltitol can be controlled with the addition of polyglucoses (col. 6, lines 1-10). More importantly, Rhibadeau-Dumas teaches that the agent for controlling crystallization should preferably have a molecular weight range above 2,000 Dalton (col. 7, lines 45-50).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhibadeau-Dumas as applied to claims 14-18, 20 and 24 above, and further in view of Mentink (U.S. Patent 5,314,701).

Rhibadeau-Dumas is being applied for the reasons noted above. However, not noted above, Rhibadeau-Dumas teaches that the ratio by weight of anticrystallising agent to the not very soluble compound. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to optimize the ratio as the amount of anticrystallising agent affects the solidity and formation of the product (col. 7, lines 1-5). Although Rhibadeau-Dumas teaches a boiled sugar product, Rhibadeau-Dumas is silent as to the possible use of other compounds in the invention. Mentink teaches that compounds such as isomalt, isomaltulose, mannitol, erythritol and other similar compounds can be used in a hard candy structure (U.S. Patent 5,314,701, col. 12, lines 25-35). Mentink teaches that it is desirable to add the noted components because of their hygroscopic properties (col. 4, lines 45-55).

Thus, it would have been obvious to one of ordinary skill in the art to add components such as isomalt, isomaltulose, mannitol, erythritol and other similar

compounds to the product of Rhibadeau-Dumas because the components offer a desirable hygroscopic property to the candy, as taught by Mentink.

Response to Arguments

Applicant's arguments with respect to claims 14-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

1. No claim is allowed.
2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip DuBois whose telephone number is (703) 305-0508. The examiner can normally be reached on Monday through Friday from 8:00 to 5:30. The examiner is not in the office the second and fourth Fridays of each month.
4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached at (703)-308-0756. The fax number for this Group is (703)-305-3602.
5. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Philip A. DuBois
07/11/00

Philip A. DuBois
MILTON CANO
PRIMARY EXAMINER

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